



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**WAGGONER CARR  
ATTORNEY GENERAL**

June 6, 1966

Honorable Dean Martin  
County Attorney  
Grayson County  
Sherman, Texas

Opinion No. C-703

RE: Authority of Grayson County  
to accept a deed from the Kansas-  
Oklahoma and Gulf Railroad Company  
to a bridge lying between Texas  
and Oklahoma spanning the Red  
River about 9 miles east of Deni-  
son, Texas and related questions.

Dear Mr. Martin:

We have your letter in regards to the above matter.

You have posed the following questions for our con-  
sideration.

"1. Would there be any legal objection  
for Grayson County, Texas, and Bryan County,  
Oklahoma, to accept a joint deed to the  
bridge in question which lies across the Red  
River?

2. If such a deed is permissible and  
legal, could the Commissioners Court of Gray-  
son County, Texas, authorize tax monies to  
be expended for the operation and maintenance  
of that part of the bridge which does not lie  
in Grayson County, Texas?"

In passing on this matter, it is pertinent to mention  
that the United States Supreme Court passed on the question  
of the ownership of the bed of the Red River in the case of  
State of Oklahoma v. State of Texas, 261 U.S. 345 (1923),  
wherein it was decided that the State of Oklahoma owned such  
part of the bed of the Red River as lies north of the medial  
line of the river and "The full title and ownership of so  
much of the bed of the river as lies south of its medial  
line are in the United States".

Here we are concerned with ownership and maintenance  
of a bridge which is not only outside the territorial limits  
of the County of Grayson but also wholly outside the terri-  
torial limits of the State of Texas, with the exception of  
the abutment to the bridge on the Texas side, which lies in  
Grayson County, Texas.

Honorable Dean Martin, page 2 (C-703)

We assume that the road leading to the bridge, or the road to be built is or will be a County road, and not a State Highway. See Attorney General's Opinion O-5775 (1944), which we enclose herewith.

Section 2, Article 11 of the State Constitution provides as follows:

"The construction of jails, court-houses and bridges, and the establishment of county poor houses and farms, and the laying out, construction and repairing of county roads shall be provided for by general laws." (Emphasis added.)

Pursuant to the foregoing provisions of the constitution the following laws touching on the subject were passed:

1. Article 718, Vernon's Civil Statutes, provides, in part, as follows.

"After having been authorized as provided in Chapter One of this title, the Commissioners Court of a county may lawfully issue the bonds of said county for the following purposes:

. . . .

4. To purchase and construct bridges for public purposes within the county or across a stream that constitutes a boundary line of the county; or ...." (Emphasis added.)

2. Article 6796, Vernon's Civil Statutes, provides as follows:

"Whenever any stream constitutes either in whole or in part the boundary line between two or more counties, or when two or more counties are jointly interested in the construction of a bridge, whether over a stream or elsewhere, it shall be lawful for the counties so divided or interested to jointly erect bridges over such stream or over any other stream, upon such equitable terms as the Commissioners Court of each county interested may agree upon."

3. Article 2351, Vernon's Civil Statutes, provides, in part, as follows:

Honorable Dean Martin, page 3, (C-703)

"Each commissioners court shall:

. . .

4. Build bridges and keep them in repair.

. . ."

In passing on Article 877, Vernon's Civil Statutes, which is the predecessor of Article 718, and which has substantially the same language as Section 4 of Article 718, supra, the Supreme Court in Bell County v. Lightfoot, Atty. Gen., 104 T. 346, 138 S.W. 381 (1911) held:

"... That the authority to construct bridges for public purposes, embraces the repair and maintenance of such structures."

This holding is also supported by Aransas County v. Coleman-Fulton Pasture Co., 108 T. 216, 191 S.W. 553, (1917).

Touching on the point as to constitutionality of expenditures for bridges crossing streams wholly outside the territorial limits of the state, it is stated in 11 C.J.S. 1015, Bridges, Sec. 17, as follows:

"A state has been held authorized to participate in the construction of interstate bridges as against the contention that the river to be bridged did not form the boundary line where the technical boundary was on the high portion of the bank of such river. ..." Citing Highway Commission of Texas v. Vaughn, 288 S.W. 875, 878 (Tex.Civ.App. 1926, error ref.)

In the Vaughn case, supra, the court stated:

"The contention that Texas cannot pay the costs of any portion of the bridge beyond her territorial limits is also without merit. Article 3, Section 56, Subd. 6 of the Constitution, authorizes the Legislature to enact local or special laws 'for the erection of bridges crossing streams which form boundaries between this and any other state.' No limitation is placed upon this grant of power either with reference to the territory over which an interstate bridge might be constructed or as

to its cost. In fact, the makers of the fundamental law knew that one end of an interstate bridge must of necessity rest within another state, that territory of both states must be spanned by it, that the occasion might arise when such a bridge would be of vital necessity, or at least of much greater value to this state than to the other state into which it opened, and they left all these matters to the Legislature without any restriction upon its authority to construct the bridge. ... (Emphasis added.)

"In some jurisdictions by Legislative enactment the costs of bridges crossing boundary streams between counties, or in some instances between cities, are to be borne equally by the respective counties or cities interested. ... The broader rule was recognized by the Texas Legislature in Article 6796, where it is provided that adjoining counties may contract to build bridges over boundary streams 'upon such equitable terms as the commissioners' court of each county interested may agree upon.'"

The Vaughn case, *supra*, defines a boundary as follows:

"The contention that Red River is not within Texas and does not form her boundary is without merit with respect to the subject matter of this suit. While the south cut bank does legally and technically form the boundary with reference to Texas civil and criminal jurisdiction and ownership over the territory, still, with reference to preventing social and commercial intercourse with her sister state, a primary object for her entering the Union, the river forms the barrier separating them. A bridge on either bank of the river will not remove the barrier. The structure required must necessarily rest on each high bank of the river, span the entire territory between them including the river, with its ends opening into each of the states, and when this is done there is of course but one structure with reference to its use. Therefore, from that viewpoint, not only the banks, but the river and all territory necessary to be spanned by the bridge in order to effect the purposes of social and business intercourse between the states, is the true boundary." (Emphasis added.)

Honorable Dean Martin, page 5; (C-703)

Keiser v. Union County, 156 Pa. 315, 26 A. 1066, (1893), decided by the Supreme Court of Pennsylvania, expresses the view upon this question as follows:

"A stream is equally the boundary line, whether the line is its middle thread, or its westernmost ripple. To find the boundary, you must find the stream and then the part of it defined as the line; but, wherever that is, it is the stream, and it is the boundary only because of that fact. No matter whether the boundary is the middle or the edge of the stream, the bridge must connect with both banks; and the moment it does so, even if only an abutment, there is no longer any one county in which it is located." (Emphasis added.)

Therefore, it is our opinion that the County of Grayson is legally authorized to accept the proposed deed and the County of Grayson is authorized to expend tax monies for the operation and maintenance of said bridge.

#### SUMMARY

The County of Grayson is legally authorized to accept the proposed deed which will convey a bridge across the Red River, and Grayson County is authorized to expend tax monies for the operation and maintenance of said bridge.

Yours very truly,

WAGGONER CARR  
Attorney General of Texas

By David Longoria  
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DL/vmo

APPROVED:

OPINION COMMITTEE

Honorable Dean Martin, page 6, (C-703)

W. V. Geppert, Chairman  
Arthur Sandlin  
John Banks  
C. Daniel Jones, Jr.

APPROVED FOR THE ATTORNEY GENERAL  
BY: T. B. Wright

Enclosure